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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DAVID JOSEPH SILVA,

Plaintiff,

v.

COUNTY OF SAN
BERNARDINO, DEPUTY ROGER
ALFARO, and DOES 1-10,
INCLUSIVE.

Defendants.

Case No.: 5:22-cv-1609-SSS-KK

**STIPULATED PROTECTIVE
ORDER¹**

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the

¹ This Stipulated Protective Order is substantially based on the model protective order provided under Magistrate Judge Kenly Kato Procedures.

1 Court to enter the following Stipulated Protective Order. The parties
2 acknowledge that this Order does not confer blanket protections on all
3 disclosures or responses to discovery and that the protection it affords from
4 public disclosure and use extends only to the limited information or items that
5 are entitled to confidential treatment under the applicable legal principles.

6 **B. GOOD CAUSE STATEMENT**

7 This action is likely to involve confidential, proprietary or private
8 information for which special protection from public disclosure and from use for
9 any purpose other than prosecution of this action is warranted. Such
10 confidential, proprietary and private materials and information consist of, among
11 other things, confidential and private information related to peace officers and
12 department policies including information otherwise generally unavailable to the
13 public, or which may be privileged or otherwise protected from disclosure under
14 state or federal statutes, court rules, case decisions, or common law. Accordingly,
15 to expedite the flow of information, to facilitate the prompt resolution of disputes
16 over confidentiality of discovery materials, to adequately protect information the
17 parties are entitled to keep confidential, to ensure that the parties are permitted
18 reasonable necessary uses of such material in preparation for and in the conduct
19 of trial, to address their handling at the end of the litigation, and serve the ends of
20 justice, a protective order for such information is justified in this matter. It is the
21 intent of the parties that information will not be designated as confidential for
22 tactical reasons and that nothing be so designated without a good faith belief that
23 it has been maintained in a confidential, non-public manner, and there is good
24 cause why it should not be part of the public record of this case.

25 **C. ACKNOWLEDGEMENT OF PROCEDURE FOR FILING**
26 **UNDER SEAL**

27 The parties further acknowledge, as set forth in Section 12.3, below, that
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1 this Stipulated Protective Order does not entitle them to file confidential
2 information under seal; Local Civil Rule 79-5 sets forth the procedures that must
3 be followed and the standards that will be applied when a party seeks permission
4 from the court to file material under seal.

5 There is a strong presumption that the public has a right of access to
6 judicial proceedings and records in civil cases. In connection with non-
7 dispositive motions, good cause must be shown to support a filing under seal.
8 *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir.
9 2006); *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002);
10 *Makar-Welbon v. Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999)
11 (even stipulated protective orders require good cause showing), and a specific
12 showing of good cause or compelling reasons with proper evidentiary support
13 and legal justification, must be made with respect to Protected Material that a
14 party seeks to file under seal. The parties' mere designation of Disclosure or
15 Discovery Material as CONFIDENTIAL does not—without the submission of
16 competent evidence by declaration, establishing that the material sought to be
17 filed under seal qualifies as confidential, privileged, or otherwise protectable—
18 constitute good cause.

19 Further, if a party requests sealing related to a dispositive motion or trial,
20 then compelling reasons, not only good cause, for the sealing must be shown,
21 and the relief sought shall be narrowly tailored to serve the specific interest to be
22 protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir.
23 2010). For each item or type of information, document, or thing sought to be
24 filed or introduced under seal in connection with a dispositive motion or trial, the
25 party seeking protection must articulate compelling reasons, supported by
26 specific facts and legal justification, for the requested sealing order. Again,
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1 competent evidence supporting the application to file documents under seal must
2 be provided by declaration.

3 Any document that is not confidential, privileged, or otherwise protectable
4 in its entirety will not be filed under seal if the confidential portions can be
5 redacted. If documents can be redacted, then a redacted version for public
6 viewing, omitting only the confidential, privileged, or otherwise protectable
7 portions of the document shall be filed. Any application that seeks to file
8 documents under seal in their entirety should include an explanation of why
9 redaction is not feasible.

10 **2. DEFINITIONS**

11 2.1 Action: This pending federal lawsuit – *David Joseph Silva v.*
12 *County of San Bernardino, Deputy Roger Alfaro, and DOES 1-10, Inclusive,*
13 *Case No. 5:22-cv-01609-SSS-KK.*

14 2.2 Challenging Party: A Party or Non-Party that challenges the
15 designation of information or items under this Order.

16 2.3 “CONFIDENTIAL” Information or Items: Information (regardless
17 of how it is generated, stored or maintained) or tangible things that qualify for
18 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
19 the Good Cause Statement.

20 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
21 their support staff).

22 2.5 Designating Party: A Party or Non-Party that designates information
23 or items that it produces in disclosures or in responses to discovery as
24 “CONFIDENTIAL.”

25 2.6 Disclosure or Discovery Material: All items or information,
26 regardless of the medium or manner in which it is generated, stored, or
27 maintained, that are produced or generated in disclosures or responses to
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1 discovery in this matter.

2 2.7. Expert: A person with specialized knowledge or experience in a
3 matter pertinent to the litigation who has been retained by a Party or its counsel
4 to serve as an expert witness or as a consultant in this Action.

5 2.8 House Counsel: City Attorney including his or her staff.

6 2.9 Non-Party: Any natural person including employees and former
7 employees, agency, partnership, corporation, association, or other legal entity not
8 named as a Party to this action.

9 2.10 Outside Counsel of Record: Attorneys who are retained to represent
10 or advise a party to this Action and have appeared in this Action on behalf of that
11 party or are affiliated with a law firm which has appeared on behalf of that party
12 and includes support staff.

13 2.11 Party: Any party to this Action, including all of its officers,
14 directors, employees, consultants, retained experts, and Outside Counsel of
15 Record and House Counsel (and their support staff).

16 2.12 Producing Party: A Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 2.13 Professional Vendors: Persons or entities that provide litigation
19 support services (e.g., photocopying, videotaping, translating, preparing exhibits
20 or demonstrations, and organizing, storing, or retrieving data in any form or
21 medium) and their employees and subcontractors.

22 2.14 Protected Material: Any Disclosure or Discovery Material that is
23 designated as "CONFIDENTIAL."

24 2.15 Receiving Party: A Party that receives Disclosure or Discovery
25 Material from a Producing Party.

26 **3. SCOPE**

27 The protections conferred by this Stipulation and Order cover not only
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1 Protected Material (as defined above), but also (1) any information copied or
2 Extracted from Protected Material; (2) all copies, excerpts, summaries, or
3 compilations of Protected Material; and (3) any testimony, conversations, or
4 presentations by Parties or their Counsel that might reveal Protected Material.

5 Any use of Protected Material at trial shall be governed by the orders of
6 the trial judge. This Order does not govern the use of Protected Material at trial.

7 **4. DURATION**

8 Once a case proceeds to trial, information that was designated as
9 CONFIDENTIAL or maintained pursuant to this protective order used or
10 introduced as an exhibit at trial becomes public and will be presumptively
11 available to all members of the public, including the press, unless compelling
12 reasons supported by specific factual findings to proceed otherwise are made to
13 the trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81
14 (distinguishing “good cause” showing for sealing documents produced in
15 discovery from “compelling reasons” standard when merits-related documents
16 are part of court record). Accordingly, the terms of this protective order do not
17 extend beyond the commencement of the trial.

18 **5. DESIGNATING PROTECTED MATERIAL**

19 5.1 Exercise of Restraint and Care in Designating Material for
20 Protection. Each Party or Non-Party that designates information or items
21 for protection under this Order must take care to limit any such designation to
22 specific material that qualifies under the appropriate standards. The Designating
23 Party must designate for protection only those parts of material, documents,
24 items, or oral or written communications that qualify so that other portions of the
25 material, documents, items, or communications for which protection is not
26 warranted are not swept unjustifiably within the ambit of this Order.

27 Mass, indiscriminate, or routinized designations are prohibited.

1 Designations that are shown to be clearly unjustified or that have been made for
2 an improper purpose (e.g., to unnecessarily encumber the case development
3 process or to impose unnecessary expenses and burdens on other parties) may
4 expose the Designating Party to sanctions.

5 If it comes to a Designating Party's attention that information or items that
6 it designated for protection do not qualify for protection, that Designating Party
7 must promptly notify all other Parties that it is withdrawing the inapplicable
8 designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided
10 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as
11 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies
12 for protection under this Order must be clearly so designated before the material
13 is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) For information in documentary form (e.g., paper or
16 electronic documents, but excluding transcripts of depositions or other pretrial or
17 trial proceedings), that the Producing Party affix at a minimum, the legend
18 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
19 contains protected material. If only a portion or portions of the material on a page
20 qualifies for protection, the Producing Party also must clearly identify the
21 protected portion(s) (e.g., by making appropriate markings in the margins).

22 A Party or Non-Party that makes original documents available for
23 inspection need not designate them for protection until after the inspecting Party
24 has indicated which documents it would like copied and produced. During the
25 inspection and before the designation, all of the material made available for
26 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
27 identified the documents, it wants copied and produced, the Producing Party
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1 must determine which documents, or portions thereof, qualify for protection
2 under this Order. Then, before producing the specified documents, the Producing
3 Party must affix the “CONFIDENTIAL legend” to each page that contains
4 Protected Material. If only a portion or portions of the material on a page
5 qualifies for protection, the Producing Party also must clearly identify the
6 protected portion(s) (e.g., by making appropriate markings in the margins).

7 (b) For testimony given in depositions that the Designating Party
8 identify the Disclosure or Discovery Material on the record, before the close of
9 the deposition all protected testimony.

10 (c) For information produced in some form other than
11 documentary and for any other tangible items, that the Producing Party affix in a
12 prominent place on the exterior of the container or containers in which the
13 information is stored the legend “CONFIDENTIAL.” If only a portion or
14 portions of the information warrants protection, the Producing Party, to the
15 extent practicable, shall identify the protected portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
17 failure to designate qualified information or items does not, standing alone,
18 waive the Designating Party’s right to secure protection under this Order for such
19 material. Upon timely correction of a designation, the Receiving Party must
20 make reasonable efforts to assure that the material is treated in accordance with
21 the provisions of this Order.

22 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
24 designation of confidentiality at any time that is consistent with the Court’s
25 Scheduling Order.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
27 resolution process under Local Rule 37.1 et seq.

1 6.3 The burden of persuasion in any such challenge proceeding shall be
2 on the Designating Party. Frivolous challenges, and those made for an improper
3 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
4 parties) may expose the Challenging Party to sanctions. Unless the Designating
5 Party has waived or withdrawn the confidentiality designation, all parties shall
6 continue to afford the material in question the level of protection to which it is
7 entitled under the Producing Party's designation until the Court rules on the
8 challenge.

9 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

10 7.1 Basic Principles. A Receiving Party may use Protected Material that
11 is disclosed or produced by another Party or by a Non-Party in connection with
12 this Action only for prosecuting, defending, or attempting to settle this Action.
13 Such Protected Material may be disclosed only to the categories of persons and
14 under the conditions described in this Order. When the Action has been
15 terminated, a Receiving Party must comply with the provisions of Section 13
16 below (FINAL DISPOSITION).

17 Protected Material must be stored and maintained by a Receiving Party at
18 a location and in a secure manner that ensures that access is limited to the
19 persons authorized under this Order.

20 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
21 otherwise ordered by the Court or permitted in writing by the Designating Party, a
22 Receiving Party may disclose any information or item designated
23 "CONFIDENTIAL" only to:

24 (a) The Receiving Party's Outside Counsel of Record in this
25 Action, as well as employees of said Outside Counsel of Record to whom it is
26 reasonably necessary to disclose the information for this Action;

27 (b) The officers, directors, and employees (including House
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1 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
2 this Action;

3 (c) Experts (as defined in this Order) of the Receiving Party to
4 whom disclosure is reasonably necessary for this Action and who have signed
5 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (d) The Court and its personnel;

7 (e) Court reporters and their staff;

8 (f) Professional jury or trial consultants, mock jurors, and
9 Professional Vendors to whom disclosure is reasonably necessary for this Action
10 and who have signed the “Acknowledgment and Agreement to Be Bound”
11 (Exhibit A);

12 (g) The author or recipient of a document containing the
13 information or a custodian or other person who otherwise possessed or knew the
14 information;

15 (h) During their depositions, witnesses, and attorneys for
16 witnesses, in the Action to whom disclosure is reasonably necessary provided:
17 (1) the deposing party requests that the witness sign the form attached as Exhibit
18 1 hereto; and (2) they will not be permitted to keep any confidential information
19 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit
20 A), unless otherwise agreed by the Designating Party or ordered by the Court.
21 Pages of transcribed deposition testimony or exhibits to depositions that reveal
22 Protected Material may be separately bound by the court reporter and may not be
23 disclosed to anyone except as permitted under this Stipulated Protective Order;
24 and

25 (i) Any mediator or settlement officer, and their supporting
26 personnel, mutually agreed upon by any of the parties engaged in settlement
27 discussions.

1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
 2 **PRODUCED IN OTHER LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other
 4 litigation that compels disclosure of any information or items designated in this
 5 Action as “CONFIDENTIAL,” that Party must:

6 (a) Promptly notify in writing the Designating Party. Such notification
 7 shall include a copy of the subpoena or court order;

8 (b) Promptly notify in writing the party who caused the subpoena or
 9 order to issue in the other litigation that some or all of the material covered by
 10 the subpoena or order is subject to this Protective Order. Such notification shall
 11 include a copy of this Stipulated Protective Order; and

12 (c) Cooperate with respect to all reasonable procedures sought to be
 13 pursued by the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served
 15 with the subpoena or court order shall not produce any information designated in
 16 this action as “CONFIDENTIAL” before a determination by the court from
 17 which the subpoena or order issued, unless the Party has obtained the
 18 Designating Party’s permission. The Designating Party shall bear the burden and
 19 expense of seeking protection in that court of its confidential material and
 20 nothing in these provisions should be construed as authorizing or encouraging a
 21 Receiving Party in this Action to disobey a lawful directive from another court.

22 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
 23 **PRODUCED IN THIS LITIGATION**

24 (a) The terms of this Order are applicable to information produced by a
 25 Non-Party in this Action and designated as “CONFIDENTIAL.” Such
 26 information produced by Non-Parties in connection with this litigation is
 27 protected by the remedies and relief provided by this Order. Nothing in these
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1 provisions should be construed as prohibiting a Non-Party from seeking
2 additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to
4 produce a Non-Party's confidential information in its possession, and the Party is
5 subject to an agreement with the Non-Party not to produce the Non-Party's
6 confidential information, then the Party shall:

7 (1) Promptly notify in writing the Requesting Party and the Non-
8 Party that some or all of the information requested is subject to a confidentiality
9 agreement with a Non-Party;

10 (2) Promptly provide the Non-Party with a copy of the Stipulated
11 Protective Order in this Action, the relevant discovery request(s), and a
12 reasonably specific description of the information requested; and

13 (3) Make the information requested available for inspection by
14 the Non-Party, if requested.

15 (c) If the Non-Party fails to seek a protective order from this court
16 within 14 days of receiving the notice and accompanying information, the
17 Receiving Party may produce the Non-Party's confidential information
18 responsive to the discovery request. If the Non-Party timely seeks a protective
19 order, the Receiving Party shall not produce any information in its possession or
20 control that is subject to the confidentiality agreement with the Non-Party before
21 a determination by the court. Absent a court order to the contrary, the Non-Party
22 shall bear the burden and expense of seeking protection in this court of its
23 Protected Material.

24 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a Receiving Party learns that, by inadvertence or otherwise, it has
26 disclosed Protected Material to any person or in any circumstance not authorized
27 under this Stipulated Protective Order, the Receiving Party must immediately (a)
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1 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
2 best efforts to retrieve all unauthorized copies of the Protected Material, (c)
3 inform the person or persons to whom unauthorized disclosures were made of all
4 the terms of this Order, and (d) request such person or persons to execute the
5 “Acknowledgment and Agreement to Be Bound” that is attached hereto as
6 Exhibit A.

7 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
8 **OTHERWISE PROTECTED MATERIAL**

9 When a Producing Party gives notice to Receiving Parties that certain
10 inadvertently produced material is subject to a claim of privilege or other
11 protection, the obligations of the Receiving Parties are those set forth in Federal
12 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
13 whatever procedure may be established in an e-discovery order that provides for
14 production without prior privilege review. Pursuant to Federal Rule of Evidence
15 502(d) and (e), insofar as the parties reach an agreement on the effect of
16 disclosure of a communication or information covered by the attorney-client
17 privilege or work product protection, the parties may incorporate their agreement
18 in the Stipulated Protective Order submitted to the Court.

19 **12. MISCELLANEOUS**

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of
21 any person to seek its modification by the Court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this
23 Protective Order, no Party waives any right it otherwise would have to object to
24 disclosing or producing any information or item on any ground not addressed in
25 this Stipulated Protective Order. Similarly, no Party waives any right to object on
26 any ground to use in evidence of any of the material covered by this Protective
27 Order.

1 12.3 Filing Protected Material. A Party that seeks to file under seal any
2 Protected Material must comply with Civil Local Rule 79-5. Protected Material
3 may only be filed under seal pursuant to a court order authorizing the sealing of
4 the specific Protected Material at issue. If a Party's request to file Protected
5 Material under seal is denied by the court, then the Receiving Party may file the
6 information in the public record unless otherwise instructed by the Court.

7 **13. FINAL DISPOSITION**

8 After the final disposition of this Action, as defined in Section 4, within
9 sixty (60) days of a written request by the Designating Party, each Receiving
10 Party must return all Protected Material to the Producing Party or destroy such
11 material. As used in this subdivision, "all Protected Material" includes all copies,
12 abstracts, compilations, summaries, and any other format reproducing or
13 capturing any of the Protected Material. Whether the Protected Material is
14 returned or destroyed, the Receiving Party must submit a written certification to
15 the Producing Party (and, if not the same person or entity, to the Designating
16 Party) by the 60 day deadline that (1) identifies (by category, where appropriate)
17 all the Protected Material that was returned or destroyed and (2) affirms that the
18 Receiving Party has not retained any copies, abstracts, compilations, summaries
19 or any other format reproducing or capturing any of the Protected Material.
20 Notwithstanding this provision, Counsel are entitled to retain an archival copy of
21 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
22 memoranda, correspondence, deposition and trial exhibits, expert reports,
23 attorney work product, and consultant and expert work product, even if such
24 materials contain Protected Material. Any such archival copies that contain or
25 constitute Protected Material remain subject to this Protective Order as set forth
26 in Section 4 (DURATION).

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1 **14. VIOLATION**

2 Any violation of this Order may be punished by any and all appropriate
3 measures including, without limitation, contempt proceedings and/or monetary
4 sanctions.

5 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

6
7 DATED: August 15, 2023

/s/James S. Terrell
James S. Terrell, Esq.
Sharon J. Brunner, Esq.
Attorneys for Plaintiff David Silva,

10
11 DATED: August 15, 2023

/s/Laurel Hoehn
Laurel Hoehn
County Counsel County of
San Bernardino
Supervising Deputy Counsel
Tom Bunton
.

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15
16
17 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

18
19 DATED: August 15, 2023


HONORABLE KENLY KIYA KATO
United States Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that
 was issue by the United States District Court for the Central District of California
 on _____ [Date] in the case of *David Joseph Silva v. County of San*
Bernardino, Deputy Roger Alfaro, and Does 1-10 inclusive, Case No. 5:22-cv-
 01609-SSS-KK. I agree to comply with and to be bound by all the terms of this
 Stipulated Protective Order and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment in the nature of contempt.
 I solemnly promise that I will not disclose in any manner any information or item
 that is subject to this Stipulated Protective Order to any person or entity except in
 strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
 Court for the Central District of California for the purpose of enforcing the terms
 of this Stipulated Protective Order, even if such enforcement proceedings occur
 after termination of this action. I hereby appoint _____
 [print or type full name] of _____ [print or type full
 address and telephone number] as my California agent for service of process in
 connection with this action or any proceedings related to enforcement of this
 Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____